UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.1044
4 April 1991

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-first session

SUMMARY RECORD OF THE 1044th MEETING

Held at Headquarters, New York,
on Thursday, 28 March 1991, at 3 p.m.

Chairman: Mr. POCAR

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Sweden (CCPR/C/58/Add.7) (continued)

1. At the invitation of the Chairman, Mr. Corell, Mr. Lempert and Mr. Rundquist (Sweden) took places at the Committee table.

Right to privacy (article 17 of the Covenant) (section VI of the list of issues)

2. The CHAIRMAN read out section VI of the list of issues concerning the third periodic report of Sweden, dealing with: (a) whether a report had been issued by the Parliamentary Committee which had been looking into questions relating to the registration of personal information, including information relating to political opinion, and, if so, what the main conclusions and recommendations had been (para. 210 of the report); (b) whether any action had been taken on the Data and Publicity Commission's proposal aimed at strengthening the protection of personal information contained in computerized files used in the field supervised by the Central Health Board (para. 212 of the report); (c) the substance of the proposed legislation aimed at prohibiting the sale of personal information without the permission of Parliament and of the proposals for regulating and limiting the use of personal identification numbers (PINs) and whether any action had been taken in that regard; (d) remedies available in case of interference with the privacy of citizens by means of data banks and electronic surveillance.

3. Mr. CORELL (Sweden), referring to section VI (a), said that the Parliamentary Committee had delivered its report in June 1990. Its major recommendations were the following. The term "personnel control" or "staff vetting" referred to the gathering of information from police files in order to ascertain an individual's reliability from the point of view of national security, in the case of candidates for posts which were important to the national defence. The Parliamentary Committee had proposed: first, that the system should be regulated by an act of Parliament, instead of by an ordinance issued by the Government; secondly, that the proposed system should encompass not only individuals who might be privy to secret information, but also persons who were important to national security, defence and protection against terrorism because of their access to areas which could be the target of sabotage; thirdly, that the total number of persons subject to control should be decreased and that control should focus on the most sensitive positions; fourthly, that it should be easier for an individual subject to control to have access to the information concerning him; and fifthly, that decisions as to which information concerning a person was to be released should, in the future, be taken by an independent board and not by the national police board. The Government intended to submit a bill to Parliament on the subject in the next few months.

4. Referring to section VI (b), he said that the Data and Publicity Commission's report had resulted in a bill being submitted to Parliament to regulate the flow of

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information within municipal and county health care systems for the purposes of statistics, research and administration. The draft legislation proposed that an exchange of information could take place only if there was no reason to believe that the individual concerned, or any of his close relatives, would be harmed by its release. It also proposed new rules for the transfer of information from municipalities and county councils to the national health and welfare board.

5. Referring to section VI (c), he said that the Data and Publicity Commission had proposed that Parliament should give permission for the sale of personal information. Under the Constitution, however, authorities could not assume functions other than those assigned to them by Parliament or the executive branch. Accordingly, the possibilities for authorities to sell personal information from computerized files were very limited. Furthermore, the Data Act provided that information which had been gathered for a certain purpose could not be used for other purposes except as authorized by law or agreed to by the individual concerned. His Government had taken the position that a proper application of the existing provisions ruled out the sale of personal information except as specifically authorized by law or decided on by the Government, and had therefore proposed that the Data Act should be clarified in order to avoid any misunderstanding with regard to the existing regulations.

6. As to PINs, the proposal submitted by the Data and Publicity Commission and adopted by his Government entailed an amendment to the Data Act, stating that PINs could be included in a file only under certain circumstances, such as when careful identification of the registered person was necessary. The keeper of the file was required to show restraint in the use of PINs, and the Data Inspectorate would supervise their use. In addition, PINs would not normally be used in computer printouts.

7. Turning to section VI (d), he said that the Data Act contained provisions to ensure that personal information was correct and complete. If an individual alleged that a computerized file contained incorrect information on him, he was entitled to know what steps had been taken in response to his complaint. If an individual was harmed by incorrect or misleading information in a file, the keeper of the file was liable to pay damages. The Data Inspectorate was responsible for supervision, could run the programme itself, and could also revoke the permit to run the file. If an individual did not abide by the provisions of the Data Act or the decisions of the Inspectorate, he could be sentenced to a fine or a prison term of up to one year.

8. With regard to electronic surveillance, legislation provided that the county administrative board must give permission for the placement of surveillance cameras which monitored areas accessible to the general public. Signs must be posted to alert the public to the presence of the cameras. A fine or a prison term of up to one year could be imposed for failure to comply.

9. With regard to illegal wire tapping, it was punishable under chapter IV, sections 8 and 8 (a) of the Penal Code, by fines or imprisonment of up to two years.

Freedom of religion and expression: prohibition of propaganda for war and of incitement to national, racial or religious hatred (articles 18, 19 and 20 of the Covenant) (section VII of the list of issues)

10. The CHAIRMAN read out section VII of the list of issues concerning the third periodic report of Sweden, dealing with: (a) the current status and prospects in respect of the debate on the separation of the Church from the State (para. 235 of the report); (b) the current status of plans for legislative action on proposals adopted by the Commission on Freedom of Expression (para. 237 of the report); (c) whether there had been any prosecutions under chapter 16, section 8, of the Penal Code, as amended, relating to the dissemination of racist statements (para. 245 of the report); (d) the action taken on the amendments envisaged for the Ordinance on Cinema Performances (para. 243 of the report).

11. Mr. CORELL (Sweden), referring to section VII (a), said that there had been an ongoing debate on that topic for many years, with numerous proposals being made. The ties between the Church and the State in his country were centuries old, which was why the question had not yet been resolved. During the previous decade, the legislation concerning the Church of Sweden had been thoroughly revised. As a result, the Church, to which more than 90 per cent of the population belonged, had acquired a structure which enabled it to take decisions in most matters through representative bodies, not only at the parish level, but also at the national and regional levels. At the request of the General Senate of the Church, his Government had appointed a committee to propose solutions to the economic and legal problems which might arise if the current relation between the Church and the State was more radically altered. When the Committee's report was published at the end of 1991, there would undoubtedly be renewed discussion of the possible separation of the Church from the State.

12. Referring to section VII (b), he said that a new bill on freedom of expression was currently before Parliament, which in essence would extend the same protection to new electronic media as had already been extended to print media.

13. Mr. LEMPERT (Sweden), referring to section VII (c), said that there had been five or six cases in 1990 in which individuals had been found guilty of breaches of chapter 16, section 8, in the new wording, and had been sentenced to prison terms.

14. Mr. CORELL (Sweden), referring to section VII (d), said that new legislation concerning freedom of performances had been enacted in 1990 and brought into force in 1991. Censorship prevailed as far as public cinematic performances were concerned, but it had not been extended to private video rentals. The problems which had arisen from the exploitation of video technology for the distribution of violent contents were being dealt with through intensified surveillance of the market and sharper penalties.

15. Mr. ANDO, referring to paragraph 239 of the report, asked for clarification concerning the term "formal grounds" and whether judicial review was available. He also asked whether the representative of Sweden could elaborate on the information given in paragraph 241.

16. Mr. CORELL (Sweden), replying to the question raised concerning paragraph 239, said that the retransmission of satellite services was free to the extent that such service could be deemed to be direct broadcasting; since that was the case with regard to most of the popular satellite services available in Sweden, the application of the Act on Local Cable Transmissions of 1986 was currently very limited. The legislation might have to be amended. The new Freedom of Expression Act related to that particular question, and further information would be included in the next periodic report. Replying to the question raised concerning paragraph 241, he said that the Ordinance on Cinema Performances had been amended and that the legislation which currently applied was the Examination and Control of Films and Video Films of 1990, which provided that appeals should be made to an administrative court.

Protection of the family (articles 23 and 24 of the Covenant) (section VIII of the list of issues)

17. The CHAIRMAN read out section VIII of the list of issues concerning the third periodic report of Sweden, namely, the status of the proposed bill to replace the Care of Young Persons Act (para. 273 of the report), and whether the new legislation, if enacted, would provide parents with increased access to their children.

18. Mr. RUNDQUIST (Sweden) said that since 1 July 1990 a new Act had been in force the provisions of which could be seen as safeguarding parents' rights. The criteria for the public care of children had been rendered more precise, and were based either on conditions at home or on the young person's behaviour. The text provided examples of the kind of behaviour contemplated in the legislation. The social welfare committees were requested to reconsider the question of continued care within a shorter period than before. The rules concerning prohibition on the removal of a child after a care order had been lifted had formerly been incorporated into the Social Services Act, but were currently incorporated into the Care of Young Persons Act, thus strengthening the legal safeguards.

19. If a decision to prohibit removal was taken, the social welfare committee was authorized to decide formally on the question of the parents' access to the child during the period of prohibition. Such a decision could be reviewed by the county administrative courts.

20. Mr. SADI said that in many countries there was an increasing battery of liberal legislation which, in his view, undermined the family unit by condoning cohabitation, either between persons of different sexes out of wedlock, or between persons of the same sex within a homosexual relationship. He asked whether Sweden had followed the pattern of those countries, and, if so, how such policies could be reconciled with the obligation to protect the family laid down in article 23 of the Covenant.

21. Mrs. HIGGINS said that her interpretation of article 23 of the Covenant in relation to the issues just mentioned would not be the same as that of the previous speaker. She also wished to know what provision had been made for the detention of

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immigrant children while the status of their parents was being investigated. If it was true that the children were sometimes held in prison, she would appreciate information concerning the number who had been held in a given year and whether it represented an increase.

22. Mr. RUNDQUIST (Sweden) said that his country's views concerning the rights of the child corresponded closely to those embodied in the Convention on that subject. The basis of its family policy was the conviction that the fundamental responsibility for children lay with the parents. Society could not and should not substitute for that role; it could, however, attempt to provide parents with the requisite support to ensure that the child received the care necessary for its development.

23. Mr. CORELL (Sweden), replying to the question raised by Mr. Sadi, said that Sweden was among the countries to which he had referred. The concept of family was not legally defined, and there were new rules in force which protected cohabitation. In that regard, Swedish legislators had been very responsive to public attitudes, although support for such legislation was not universal. If the Committee so wished, his delegation could elaborate further on the subject in its next report.

24. Mr. LEMPERT (Sweden) said that legislation in Sweden made provision for remand in custody of the children of asylum-seekers if it was evident that the children would conceal themselves in order to avoid an impending enforcement. In 1990 there had been some 30,000 asylum-seekers, and 260 children had been taken into custody. The normal practice, however, was not to separate the child from his or her legal guardian.

Rights of persons belonging to minorities (article 27 of the Covenant) (section IX of the list of issues)

25. The CHAIRMAN read out section IX of the list of issues concerning the third period report of Sweden, namely, whether any action had been taken to resolve the question raised in the main report submitted by the Governmental Commission on the Legal Position of the Samis (para. 290 of the report).

26. Mr. CORELL (Sweden) said that much more information on that issue would be provided in his country's next periodic report, since by that time the parliamentary bill resulting from the report of the Governmental Commission would have been prepared.

27. Mr. ANDO, referring to paragraph 291 of the third periodic report of Sweden, said that he would welcome more information on the provisions governing State funding of religious communities. He wondered whether Sweden had experienced any difficulties in reconciling the rights conferred under articles 26 and 27 of the Covenant with the traditional values of specific minorities, for example with regard to discrimination against women.

28. Mr. CORELL (Sweden) said that the provisions had only recently been adopted, and that it was therefore too early to evaluate the effects of their application. Where the rights of minorities were concerned, every effort was made to ensure that minorities were able to preserve their own cultural heritage, but the exercise of that right must be consonant with ordre public and Swedish legislation. For example, the practice of female circumcision was illegal in Sweden.

29. Mr. LALLAH said that, rather than trying to reconcile the exercise of rights under the Covenant with legislation and ordre public, the authorities should be concerned to maintain a proper balance between the rights themselves, which could sometimes be difficult to reconcile. He also thought that State funding of the established Church of Sweden might be construed as discriminatory.

30. Mrs. HIGGINS said that she agreed with Mr. Lallah regarding the need to preserve a balance between rights provided by the Covenant rather than strike a balance between those rights and the provisions of domestic legislation.

31. Mr. CORELL (Sweden) said that legislators in Sweden did in fact see the emphasis as being on reconciling rights arising from the Covenant, but that conflicts between those rights and domestic legislation did sometimes occur. With regard to State funding of the established Church, he said that the question must be seen in a historical perspective, and that it should be borne in mind that the Church had traditionally acted as a registrar of the Swedish people and therefore had both secular and pastoral functions. However, the whole question of Church-State relations was currently under review.

32. Mr. WAKO said that he would welcome clarification of the reasoning behind the Swedish Government's reservation to article 14 (7).

33. Mr. CORELL (Sweden) said that the reservation was intended to cover cases in which evidence had come to light, after a defendant had been convicted, indicating that he was in fact innocent, or in which subsequent evidence made it clear that a defendant had been wrongfully acquitted of a serious charge.

Liberty and security of the person (articles 9, 10 and 11 of the Covenant) (section III of the list of issues) (continued)

34. Mr. CORELL (Sweden) said, in reply to a question raised at the previous meeting by Mrs. Higgins, that the provisions on the time-limits for detention on remand could be found in chapter 24 of the Code of Judicial Procedure, and that, while such detention did not normally exceed three weeks, decisions were taken on a case-by-case basis, taking into account the gravity of the offence and the complexity of the issues involved.

Right to a fair trial (article 14 of the Covenant) (section IV of the list of issues) (continued)

35. Mr. CORELL (Sweden), replying to a question raised by Mr. Dimitrijević at the previous meeting, said that the Code of Judicial Procedure stipulated that it was

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for the courts to decide whether to accept or reject evidence which had been illegally acquired, and that, if the Court did admit such evidence, proceedings could be initiated against the person or persons who had acquired it.

36. Mr. LALLAH referred to the case in which an acquittal had been reversed because of new evidence adduced two days later. An innocent man could derive small comfort from the fact that his name would not be cleared in order to preserve the dignity of the judiciary. Indeed, the very purpose of article 14 (7) was to avoid double jeopardy. Moreover, an innocent person should not be found guilty by association because he was perceived to have ties to a suspect group - i.e., a terrorist group.

37. Mr. WAKO, referring to paragraph 201 of the report, reiterated that, essentially, he had wished to know whether an acquittal had been reversed after a new trial solely in order to prevent the credibility of the judicial system from being called into question.

38. Mr. CORELL (Sweden) clarified that the credibility of the judicial system was not the only issue. Rather, the thinking had been that the public might be alarmed to learn that guilty persons were at large. In fact, retrials occurred not because judges pronounced on the evidence incorrectly, but rather because the evidence had been insufficient the first time. He could not provide statistics on the number of acquittals which had been reversed. If Mr. Wako's interpretation was applied, paragraph 201 would indeed be more appropriately placed under article 14 (6), but, as the Swedish delegation had construed it, it could also come under article 14 (7).

39. The CHAIRMAN invited the members of the Committee to present their general comments on the third periodic report of Sweden.

40. Ms. CHANET praised the Swedish representative for giving clear and precise responses to the questions posed by Committee members and noted that Sweden had one of the most outstanding human rights records in the world. While the provisions of the Covenant were essentially covered by the Swedish Constitution or Swedish national law, articles 16 and 17 of the Constitution did not bar discrimination on grounds of language, political opinion, property, birth or other status in full conformity with article 2 (2) of the Covenant. That meant there was no constitutional remedy available to someone wishing to protest against those specific violations. She was concerned about the situation of certain categories, such as sick persons and aliens, and, particularly, about the law of January 1989, which authorized police to order alcoholics and drug abusers to submit to treatment. In France, only administrative authorities could issue such an order and even they could not do so without consulting two doctors.

41. Few constitutions provided for the protection of aliens and, in that regard, Sweden was to be commended. However, article 20 of the Swedish Constitution guaranteeing the rights of aliens was difficult to read and even misleading in places. Indeed, the wording did not reflect the extent to which aliens in Sweden were actually protected under article 9 of the Covenant. Contrary to article 13 of

the Covenant, the Constitution provided no remedy for a person expelled from Swedish territory because he was suspected of terrorist involvement. The fact that few persons were in those circumstances was not a sufficient reply.

42. Mr. EL-SHAFEI praised the Swedish delegation for its efforts to provide updated information on the human rights situation in Sweden. In attempting to harmonize its domestic legislation with the Covenant, Sweden had clearly taken into account not only observations by the Committee on its second periodic report, but also observations by other human rights treaty bodies. Sweden had also acceded to the Optional Protocol and a number of its citizens had availed themselves of the redress procedure for which it provided.

43. The procedure for admitting refugees to Swedish territory still gave cause for concern. Greater efforts must also be made to combat racist tendencies. The discussion of threats to the environment and lifestyle of indigenous populations raised questions as to whether property matters were handled so as to benefit certain indigenous groups. Lastly, he wondered whether minorities could preserve their own language and culture.

44. Mr. LALLAH praised the Swedish delegation for its report and its constructive replies to questions by Committee members. With regard to recruitment of the judiciary, it was not apparent from the Swedish Constitution that the judiciary was completely separate from the legislative and executive branches. There was a danger that the public would perceive the judiciary as part of the civil service rather than as an independent branch which acted independently. He also wondered about the practice of judges becoming advisers to the Government. The judiciary should remain a higher order, separate from the executive branch; indeed, the executive branch should be answerable to the judiciary.

45. Mr. MYULLERSON commended the Swedish delegation on its report and responses to the Committee and noted that Sweden could serve as a model for other countries with a less established democratic tradition by incorporating the provisions of the Covenant and other international treaties more fully in its domestic laws. For example, in the Soviet Union, when he had proposed a constitutional amendment that would bring national law in conformity with the provisions of international treaties, Sweden had been cited as a country where international law was not fully incorporated in domestic law, without any apparent detriment to the protection of human rights.

46. Mrs. HIGGINS also commended the Swedish delegation on its report and on the manner in which it had engaged in dialogue with the Committee. She agreed with Mr. Lallah that the public must perceive the judiciary as independent, and with Ms. Chanet concerning the compulsory treatment of alcoholics and drug abusers. She also agreed with Mr. Fodor that periodic reports should be as comprehensive as possible, and should include some reference to separate instruments elaborated in relation to specific articles of the Covenant.

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47. While welcoming the new legislation in Sweden as it bore upon article 9 of the Covenant, she remained concerned that article 9 (3) was not yet the basis of Swedish practice concerning bail. Refusing bail so that the wealthy would not have an unfair advantage was not defensible. While satisfied with the information provided concerning detention on remand, she was concerned that a defence could potentially carry imprisonment of not less than two years. The assumption that that period could serve to offset a longer prison term reversed the very presumption of innocence. In any case, it was not justification for refusing bail. She was also concerned that the Swedish system permitted extended periods of solitary confinement, however necessary that might be in order to prevent collusion among terrorists. She welcomed the abolishment of municipality imprisonment in future legislation, as she had been concerned that it could occur purely on the basis of an administrative decision. She also welcomed the fact that the remaining controls were subject to court authorization, even though a three-year interval between court reviews was too long.

48. Mr. DIMITRIJEVIC also commended Sweden on its report and the answers it had provided to the Committee. A country as advanced as Sweden in the field of human rights also provided matter for reflection on possible future concerns. Often, in the more advanced countries, less compassion was shown towards persons deemed to be sufficiently covered by Government regulations and agencies, such as aliens, the poor and the elderly. He was somewhat concerned, for example, by what might be called the overzealousness of social legislation authorizing the compulsory treatment of alcoholics and drug offenders, the removal of children from homes deemed to be unsuitable and the censorship of extreme violence in the media.

49. The problem of terrorism also raised new considerations. The charge of terrorism was serious, and greater protection should be afforded to those accused of it; a person suspected of terrorist involvement should not be immediately deprived of his rights; when stopping and searching passengers at airports, officials should not always pick out persons with swarthy complexions. Thought must be given to new ways and means of combating terrorism while still maintaining basic individual rights.

50. Mr. ANDO said that, notwithstanding the high degree of respect for human rights in Sweden, some shortcomings remained. In common with many other signatories, Sweden had not incorporated the Covenant into its domestic legislation, as a result of which there were some gaps between the provisions of the Covenant and Swedish law. With regard to restraining orders in particular, there was a need for safeguards to prevent their abuse.

51. Of all human rights issues, discrimination was one of the most basic. Affirmative action itself constituted discriminatory treatment. Numerical equity should not amount to an end in itself, the true goal being to reflect the views of as wide a spectrum of society as possible. It was important to devise the most suitable approach in each specific situation.

52. The CHAIRMAN said that the Swedish delegation had engaged in a most constructive dialogue with the Committee, having striven to satisfy the concerns expressed by its members. In particular, the explanation regarding Sweden's reservation in respect of article 14 (7) had indicated that the scope of the reservation was less far-reaching than the Committee might have concluded on a literal construction. The discussion of provisions relating to discrimination had also been very useful in that such issues, in societies where gross violations did not occur, constituted a central element in the protection of human rights.

53. Mr. CORELL (Sweden) said that Sweden took a very serious interest in the protection of human rights. His Government had contributed to the formulation of various international human rights instruments, and had supported the establishment of committees to which States parties should report regarding the fulfilment of their obligations. Accordingly, it was quite natural for Sweden to engage in a dialogue with the Human Rights Committee. Dialogues must, of course, be conducted in such a manner that both States parties and the Committee maintained their objectivity and credibility, and concern for human rights must be expressed on an ongoing basis, in that such rights did not constitute a finite goal which could be attained once and for all.

54. The CHAIRMAN said that the Committee had concluded its consideration of the third periodic report of Sweden; the fourth periodic report was due to be considered in October 1994.

The meeting rose at 5.50 p.m.